



U.S. Citizenship  
and Immigration  
Services

Non-Precedent Decision of the  
Administrative Appeals Office

MATTER OF L-X-

DATE: MAR. 16, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a professor of mathematics, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After the petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional evidence and contends that she is eligible for a national interest waiver under the *Dhanasar* framework.

Upon *de novo* review, we will sustain the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we recently set forth a new framework for adjudicating national interest waiver petitions. *See Dhanasar*, 26 I&N Dec. 884.<sup>1</sup> *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the

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<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>2</sup>

## II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.<sup>3</sup> The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The regulation at 8 C.F.R. § 204.5(k)(4)(ii) states, in pertinent part, "[t]o apply for the [national interest] exemption the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate." The denial decision stated that "since the petitioner did not submit this required evidence, USCIS must deny the Form I-140." At the time of filing and again with the appeal, the Petitioner offered two properly signed and fully executed ETA-750B forms. Accordingly, the Director's finding on this issue is withdrawn. Furthermore, for the reasons discussed below, we find the Petitioner has established eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

### A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner is currently working as an assistant professor in the Department of Mathematics at the [REDACTED]. Her current research is aimed at developing "an efficient [REDACTED] – one of the most common forms of fluid motions in nature." She states that she intends to "continue her cutting edge-research in computational fluid dynamics and to develop a multidisciplinary platform that combines the power of mathematics and computational modeling to solve challenging scientific and engineering problems." The record includes letters of support indicating that the Petitioner's work contributes to the development and application of advanced mathematical models. For example, [REDACTED] a professor of mathematics at the [REDACTED] explains that the Petitioner "designs numerical algorithms and applies them to simulate complex physical systems on high performance computers." Accordingly, we find that the Petitioner's proposed work to advance research in computational fluid dynamics and develop advanced mathematical models has substantial merit.

To satisfy the national importance requirement, the Petitioner must demonstrate the "potential prospective impact" of her work. She asserts that her research provides "powerful modeling tools for the scientific studies of complex systems in the field of mechanics and biomedical science." For

<sup>2</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

<sup>3</sup> The record reflects that the Petitioner received a Ph.D. in mathematics (2012) from the [REDACTED].

instance, [REDACTED] professor and chair of the Department of Mathematics at the [REDACTED] states that the Petitioner's work "on the [REDACTED] past a solid body" has widespread applications such as understanding "the air motion around the wings of an airplane or flying bird, and the water motion around a submarine or swimming fish." [REDACTED] further notes that "[REDACTED] is also at the heart of geophysical fluid flows including hurricanes and tornadoes" and that the Petitioner's research fundamentally advances applied mathematical research in the United States. In addition, the Petitioner has submitted documentation indicating that the benefit of her proposed computational fluid dynamics research has broader implications, as the results are disseminated to others in the field through scientific journals and conferences. As the Petitioner has documented both the substantial merit and national importance of her proposed research, we find that the record supports the Director's finding that she meets the first prong of the *Dhanasar* framework.<sup>4</sup>

#### B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner's qualifications. The Petitioner submitted her curriculum vitae, academic records, awards, [REDACTED] membership, grants sponsored by the [REDACTED], and peer review activities. She also provided evidence of her published and presented work and documentation of articles that cited to her findings. In addition, the Petitioner offered reference letters describing her expertise in fluid dynamics, solid mechanics, and biological modeling, and her past record of success as a mathematics researcher.

We find that the Petitioner's past experience renders her well positioned to advance her proposed endeavor aimed at understanding the fundamental behavior of fluid dynamics and development of computational models. For example, [REDACTED] a senior lecturer at the [REDACTED] discusses the Petitioner's fluid dynamics research "focused on the circulation shed from the surface of a moving flat plate." He indicates that the Petitioner "made a detailed comparison between viscous simulations and a [REDACTED] and explains that her work offers "the most complete and useful comparisons" in the literature to date. In addition, [REDACTED] professor of mathematics at [REDACTED] asserts that the Petitioner's "research on the [REDACTED] in the human airway was significant and outstanding." He notes that the Petitioner developed a model that "successfully isolates the effects of major influencing parameters of the beating cilia and provides an insight into the basic biomechanical mechanisms of particle transport in mucous." Furthermore, [REDACTED]

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<sup>4</sup> With respect to the Petitioner's proposed teaching duties at the [REDACTED] we find that they have substantial merit. The record, however, does not establish that her course instruction would impact her endeavor more broadly, as opposed to being limited to the students at the institution where she teaches. Accordingly, without sufficient documentary evidence of their broader impact, the teaching activities do not meet the "national importance" element of the first prong of the *Dhanasar* framework. Similarly, in *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

<sup>5</sup> For example, the record reflects the Petitioner was the principal investigator on a research start-up allocation grant from the [REDACTED] a collection of advanced digital resources sponsored by the [REDACTED]

██████████ a mathematics professor at the ██████████ states the Petitioner “successfully developed a numerical model that enables us to resolve the ██████████ near sharp edges.” ██████████ adds that “[t]his new model is fundamental and robust, and it leads us to new and exciting directions for understanding the intrinsic behavior of the starting ██████████”

The record also includes citation evidence showing that the Petitioner’s published work has been cited by independent researchers, and that the rate at which her work has been cited is high relative to others in her field. Such evidence helps show a past record of achievement that demonstrates the Petitioner is well positioned to advance mathematics research.

The Petitioner’s experience and expertise in her field, published and presented work, record of success contributing to various research projects, and progress in the area of understanding fluid dynamics position her well to advance her proposed endeavor. Accordingly, the record supports the Director’s finding that she satisfies the second prong of the *Dhanasar* framework.

### C. Balancing Factors to Determine Waiver’s Benefit to the United States

The Director determined that the Petitioner had met the first two prongs of the *Dhanasar* framework, but found she had not submitted sufficient evidence to meet this prong. As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

As a mathematics researcher, the Petitioner possesses considerable experience and expertise in computational fluid dynamics, solid mechanics, and biological modeling. The record also demonstrates the widespread benefits associated with research developments in the field of computational fluid dynamics and their broad application in energy, environmental, engineering, and health related fields. The Petitioner has documented her past successes in advancing applied mathematical sciences and providing influential research findings. In addition, the repeated funding that she has received from the ██████████ further demonstrates that the greater scientific community has found her fluid dynamics and biomechanics research to be promising and useful. Based on the Petitioner’s track record of successful research and the significance of her ongoing fluid dynamics studies that advance U.S. scientific interests, we find that she offers contributions of such value that, on balance, they would benefit the United States even assuming that other qualified U.S. workers are available.

### III. CONCLUSION

The Petitioner has met the requisite three prongs set forth in the *Dhanasar* analytical framework. We find she has established eligibility for and otherwise merits a national interest waiver as a matter of discretion.

*Matter of L-X-*

**ORDER:** The appeal is sustained.

Cite as *Matter of L-X-*, ID# 1086596 (AAO Mar. 16, 2018)